IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JASON A. SANDEFUR, Plaintiff, v. DR. JOE GOLDENSON, et al., Defendants.	No. C 14-3899 LHK (PR) ORDER OF DISMISSAL WITH LEAVE TO AMEND

Plaintiff, a California state prisoner proceeding *pro se*, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. For the reasons stated below, the court dismisses the amended complaint with leave to amend.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Plaintiff's Claims

In the original complaint, plaintiff alleged that he has been stabbed in his left lung. Plaintiff had chest tube placements because his lung collapsed. Plaintiff's spleen had also been lacerated, and he had severe hypergranulation and pleurisy, which is chronic pleuritic chest pain. Plaintiff also had bulging slipped disks in his lower back. Plaintiff claimed that the Jail Health Services at San Francisco County Jail provided proper pain medication until about three or four years ago, when the jail implemented a new pain management limit. When plaintiff was arrested in October 2010, plaintiff's medication dosage was cut from 60 milligrams per day to 30 milligrams per day. At the San Bruno jail, the nurses often assumed that inmates were "cheeking" or hiding their medications. In May 2013, Nurse Mary Jane thought plaintiff threw away a small piece of pain medication. Then, in September 2013, a deputy accused plaintiff of holding onto his medication. As a result, plaintiff claimed that Jail Health Services discontinued plaintiff's medication and plaintiff was not receiving adequate pain medication.

The court screened plaintiff's complaint pursuant to 28 U.S.C. § 1915A, and found that although it appeared that plaintiff was attempting to raise a claim of deliberate indifference to serious medical needs, plaintiff's complaint was deficient. Specifically, plaintiff did not link individual defendants to any action or inaction that gave rise to a reasonable inference of deliberate indifference. As a result, the court dismissed the complaint with leave to amend. The court informed plaintiff that he would need to allege specific facts that would demonstrate that each named defendant purposefully acted or failed to act knowing that plaintiff faced a substantial risk of serious harm, and that plaintiff did suffer harm as a result.

In plaintiff's amended complaint, plaintiff states that Nurse Practitioners John Poh, Nancy Orcutt, and Elizabeth Marlow "have been made aware countless times of my difficulties with bowel movements, sleep and extreme pain when I yawn, sneeze, cough, etc. – they are

completely, unequivocally, deliberately indifferent to the level of wanton infliction of pain." (Am. Compl. at 4.) However, while specific facts are unnecessary to state a claim for relief if the claim otherwise gives the defendant fair notice, *see Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted), the "[f]actual allegations must be enough to raise a right to relief above the speculative level," *see Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 553-56, (2007) (citations omitted). In other words, to state a claim that is plausible on its face, a plaintiff must allege facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiff's claim, as it is currently stated, does not set forth sufficient facts to give rise to a reasonable inference that Nurse Practitioners John Poh, Nancy Orcutt, or Elizabeth Marlow knew that plaintiff faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable steps to abate it. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Plaintiff also appears to accuse Nurse Practitioners John Poh, Nancy Orcutt, and Elizabeth Marlow of prohibiting plaintiff from signing a pain management agreement stating that plaintiff will not hoard or divert his medication. (Am. Compl. at 4.) However, it is not clear whether Nurse Practitioners John Poh, Nancy Orcutt, or Elizabeth Marlow has the authority to prevent plaintiff from making such an agreement, whether such an agreement exists, or what effect any agreement would have on plaintiff's claim against Nurse Practitioners John Poh, Nancy Orcutt, and Elizabeth Marlow. Plaintiff does not assert that Nurse Practitioners John Poh, Nancy Orcutt, or Elizabeth Marlow are refusing to administer pain medication to plaintiff, or that they are otherwise knowingly disregarding a substantial risk of serious harm to plaintiff. To clarify this confusion, plaintiff will be given one last opportunity to amend his complaint to clearly state what Nurse Practitioners John Poh, Nancy Orcutt, and Elizabeth Marlow did or did not do that gives rise to an inference that plaintiff was suffering from a serious medical need, and that each defendant knew that plaintiff faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable steps to abate it.

In the amended complaint, plaintiff also re-alleges that Dr. Joe Goldensen, the Director of Jail Health Services, is liable as a supervisor because Dr. Goldensen "has repeatedly been made

aware of my situation through countless grievances." (Am. Compl. at 5.) The court previously warned plaintiff that a supervisor may be liable under section 1983 upon a showing of (1) personal involvement in the constitutional deprivation or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir. 2012) (citing *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011)). However, again, plaintiff does nothing more than give conclusory statements without specifying what Dr. Goldensen did or did not do to demonstrate deliberate indifference. Plaintiff states that Dr. Goldensen "co-signs on his minions work," but the court is unsure whether plaintiff is referring to Dr. Goldensen's employees' medical reports, Dr. Goldensen's employees' review of grievances, or what Dr. Goldensen is "co-signing" and how it is connected to Dr. Goldensen's alleged wrongful conduct and plaintiff's claimed violation. (Am. Compl. at 3.) Nonetheless, plaintiff will be given one last opportunity to amend his complaint.

Finally, in the amended complaint, plaintiff appears to allege that the Jail Health Services is liable under a municipal liability theory. The court previously warned plaintiff that to raise a claim of municipal liability, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving force behind the constitutional violation. *See Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). Here, plaintiff alleges that the Jail Health Services, as a part of the San Francisco Sheriff's Department, had a policy, i.e., a pain management agreement/contract. Plaintiff then alleges that "they" violated that policy. (Am. Compl. at 5.) However, municipal liability requires a showing that the local government's policy itself amounts to deliberate indifference to the plaintiff's constitutional rights. *Plumeau*, 130 F.3d at 438. Instead, plaintiff's amended complaint appears to state that while the Jail Health Services had a policy, the deliberate indifference occurred when employees violated that policy by failing to abide by the agreement. Stated in that way, plaintiff has not stated a claim against Jail Health Services or the San Francisco Sheriff's Department under municipal liability.

Accordingly, the amended complaint is DISMISSED WITH LEAVE TO AMEND.

Plaintiff will be give one last opportunity to correct the deficiencies in his amended complaint if he can do so in good faith. Plaintiff may not incorporate material from the prior complaints by reference.

CONCLUSION

For the foregoing reasons, the court hereby orders as follows:

1. Plaintiff's complaint is DISMISSED with leave to amend.

2. If plaintiff can cure the pleading deficiencies described above, he shall file a SECOND AMENDED COMPLAINT within **thirty days** from the date this order is filed. The amended complaint must include the caption and civil case number used in this order (C 14-3899 LHK (PR)) and the words SECOND AMENDED COMPLAINT on the first page. Plaintiff may not incorporate material from the prior complaint by reference. Failure to file a second amended complaint within thirty days and in accordance with this order will result in a finding that further leave to amend would be futile and this action will be dismissed.

3. Plaintiff is advised that an amended complaint supersedes the prior complaints. "[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in the amended complaint." *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981). Defendants not named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

4. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: 5/8/2015

Lucy H. Koh

LUCY H. KOH
United States District Judge